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OFFICE OF PETITIONS

In re Application of
Skierczynski et al.
Application No. 09/693,333
Filed: October 20, 2000
Atty Docket No. G-073US03REG

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DECISION ON APPLICATION FOR
PATENT TERM ADJUSTMENT
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This is a decision on the "APPLICATION FOR PATENT ADJUSTMENT UNDER 37 C.F.R. 1.705(b)," filed August 30, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero days (0) days to seven hundred twenty-nine (729) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance as seven hundred sixty **(760)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 3, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days. On August 30, 2004, applicants timely¹ submitted an application for patent term adjustment (with authorization to charge the required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is seven hundred twenty-nine (729) days.

¹ PALM records indicate that the Issue Fee was received in the Office on August 31, 2004.

Applicants assert entitlement to a patent term adjustment of 729 days on the basis that the office incorrectly determined 899 days for applicant delay in filing a reply to the Notice to File Missing Parts mailed January 8, 2001. Applicants point out that their response was mailed and received by the Patent Office on June 11, 2001. Applicants concede a ninety-five (95) day reduction in patent term adjustment for this delay; however, they dispute the imposition of an applicant delay of 899 days in responding to this notice. Finally applicants view the imposition of a PTO delay of 824 days to be proper. Applicants' points are well taken.

The reduction of 899 days has been found to be incorrect. A review of the application file reveals that, as stated by applicants, their response to the Notice to File Missing Parts of Application mailed January 8, 2001, is of record in the application with a date of receipt by the Office of June 11, 2001. Furthermore, the response included a complete reply to the Notice. Thus, the Office should not have assessed applicants a delay of eight hundred ninety-nine (899) days. Applicants did fail to engage in reasonable efforts to conclude prosecution of the application by delaying in replying to the Notice to File Missing Parts of Application. The response was received on June 11, 2001, outside of the three-month period provided for § 1.704(b), but only by 64 days.

Applicants are reminded that § 1.704(b) provides that:

The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

Accordingly, the period of reduction under this section is 64 days, not 95 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is seven hundred sixty (760) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is seven hundred sixty **(760)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

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Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Kary A. Fure
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen